

**ILLINOIS POWER COMPANY
ILLINOIS COMMERCE COMMISSION**

DOCKET NO. 02-0169

SURREBUTTAL TESTIMONY OF BRIAN H. MARTIN

NOVEMBER 4, 2002

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PREPARED SURREBUTTAL TESTIMONY OF BRIAN H. MARTIN

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I. INTRODUCTION AND PURPOSE

2 1 Q. Please state your name and business address.

3 A. Brian H. Martin, 500 South 27th Street, Decatur, Illinois 62521. I am the
4 Environmental Services Manager at Illinois Power Company (the "Company" or
5 "Illinois Power" or "IP").

6 2 Q. Have you previously submitted testimony in this proceeding?

7 A. Yes, on April 29, 2002, I submitted IP Exhibits 2.1 - 2.6 and on September 23,
8 2002, I submitted IP Exhibits 2.7 – 2.9.

9 3 Q. What additional evidence are you submitting at this time?

10 A. I am submitting as surrebuttal evidence IP Exhibit 2.10. IP Exhibit 2.10 is
11 prepared surrebuttal testimony containing questions and answers numbered 1
12 through 9.

13 4 Q. What is the purpose of your surrebuttal testimony?

14 A. I am responding to the rebuttal testimony of Dianna Hathhorn of the Staff of the
15 Commission. In particular, I am responding to Ms. Hathhorn's assertion that the
16 EPRI study on the background level of polycyclic aromatic hydrocarbons in

17 Illinois (PAH Study) is for research and development and recovered under IP's
18 base rates. In her rebuttal testimony, Ms. Hathhorn also addresses the EPRI fees;
19 however, I am not addressing these fees in my surrebuttal testimony because I
20 believe that both parties have adequately addressed their opinions with regard to
this subject.

22 **II. POLYCYCLIC AROMATIC HYDROCARBONS STUDY (PAH)**

23 5 Q. Staff has characterized the EPRI Background PAH Study as "Research and
24 Development" which should be recovered under base rates (ICC Staff Exhibit
25 2.00, page 4, lines 68-72). Do you agree with that characterization?

26 A. No, the EPRI Background PAH Study is a cost that falls within the scope of
27 recoverable costs under Rider EEA and GEA as defined in those tariffs. Rider
28 GEA's definition of Environmental Activities is

29 Environmental Activities refer to the investigation, sampling, monitoring,
30 testing, removal, disposal, storage, remediation or other treatment of
31 residues associated with Manufactured Gas Operations, or with other
32 operations that generated substances subject to federal, state or local
33 environmental laws conducted at locations where Manufactured Gas
34 Plants operated, or the dismantling of facilities utilized in Manufactured
35 Gas Operations

36 The PAH Study was specifically undertaken by IP to facilitate (and improve the

37 efficiency and reduce the costs of) MGP cleanups. IP would not have engaged in
38 this program and incurred these costs if it were not engaged in MGP cleanup
39 activities and saw this study as offering a potential to improve efficiencies and
40 reduce costs. More specifically, the purpose of the study was to determine the
41 background concentrations of PAHs in Illinois soils. The Illinois EPA was an
42 active participant in the study.

43 The Illinois EPA's TACO regulations specifically allow for the collection
44 of background contaminant data to modify site-specific cleanup objectives.
45 However, such site-specific determinations are costly and time-consuming. Ms.
46 Hathhorn discusses IP admitting that the PAH study was conducted on a generic
47 basis (ICC Staff Exhibit 2.00, page 5, lines 94-99). Nothing in the Riders suggest
48 that MGP costs cannot be recovered simply because they are incurred on a
49 'generic' basis. This approach obviated site-specific background determinations
50 in many cases. Site-specific background determinations would be recoverable
51 under the Riders. It isn't reasonable to deny this study because it achieves the
52 same objective (lower MGP cleanup costs) in a more efficient manner. To do so
53 would discourage utilities from undertaking innovative projects with the potential
54 to minimize MGP cleanup costs for the customer. Whether or not the Company
55 engages in activities on a specific or generic basis, the overall goal of the MGP
56 riders is to address those incremental costs related to MGP sites. That is what the

57 Background PAH study did. As mentioned, IP could have performed the tests on
58 each individual site and accomplished the same objectives, however, the costs
59 would have been greater for both the Company and the customer. The only
60 unique aspect of the EPRI Background PAH Study was that it collected data on a
61 statewide basis to attempt to modify the cleanup objectives within the TACO
62 regulations.

63 6. Q. Please clarify the activities that were undertaken as part of the PAH Study?

64 A. The PAH Study included collection and analysis of soil samples occurs on an
65 almost daily basis at MGP sites. In fact, such sampling and analysis is basic to
66 the management of MGP sites. Beyond sampling and analysis, EPRI's only other
67 function in the project was to tabulate the analytical results and compile them into
68 a report and make sure that the reporting occurred in an unbiased manner. EPRI
69 directed its subcontractor to do specific statistical tests on the data as requested by
70 the Illinois EPA. The Illinois EPA requested the statistics so that the data could
71 be compared with a concurrent study within the City of Chicago. Statistical
72 analysis of data, like soil sampling and analysis in this specific case should not be
73 considered as a commercialized R&D project. Statistical analysis of data is
74 specifically addressed in the state's TACO regulations and is a routine activity in
75 the course of managing MGP sites.

76 7. Q. If the EPRI Background PAH Study is not R&D, then why was the Electric Power

77 Research Institute chosen to do the study?

78 A. This study could have been done by any competent environmental consultant in
79 conjunction with a commercial analytical laboratory. EPRI was chosen because
80 of its expertise in the investigation of MGP sites and the academic credentials of
81 EPRI staff, which facilitated the acceptance of the study results by the Illinois
82 EPA. EPRI's experience in coordinating projects among member utilities also
83 played a role in their selection. But most importantly, EPRI is well known in the
84 MGP business as being able to oversee projects with an unbiased objective for
85 both the regulators, community, and the utility. Although this was not an R&D
86 project, EPRI was uniquely qualified to manage this project.

87 Even though EPRI performed the Background PAH Study, the study is not
88 research and development (R&D). Typical R&D falls into two general categories.
89 Traditional R&D projects involve some type of scientific experimentation in the
90 hope of achieving a financial or technical advantage for the participant(s).
91 results of such projects are usually kept secret among the participants in order to
92 maintain any advantages that result from the projects. Other research and
93 development is started to develop types of projects like preparation for teaching;
94 scientific and technical information services; general purpose or routine
95 collection; standardization and routine testing; feasibility studies (except into
96 research and experimental development projects); the commercial, legal and

administrative aspects of patenting, copyright or licensing activities; and routine computer programming, systems work or software maintenance (but note research and experimental development into applications software, programming languages and new operating systems is included).

The Background PAH study is different. This program is not routine or for general purpose, as most R&D programs are defined. The EPRI program is actually a very specific study, not only in its goals, but also in its oversight which includes regulatory input. First, the participation of a state agency in the design of the study and submission of the study results to that agency negated any potential secrecy of the study. Submission of the study results to the Illinois EPA made the study public information. Second, EPRI's role was managerial in nature. EPRI's subcontractor (META Environmental) collected and analyzed soil samples to quantify the concentrations of PAHs in the natural environment. This is not classified as R&D because the project is geared to render results based on MGP site conditions in the state of Illinois. The company specifically engaged in this project as a means to effectively manage the MGP costs at its MGP sites.

8. Q. Staff has recommended rejection of the Background PAH Study costs because they are R&D. Staff supports this position by citing other MGP-related costs that are not recoverable, such as company labor charges and legal costs (ICC Staff Exhibit 2.00, page 4, lines 78-83). Is Staff making a valid comparison between

the Background PAH Study costs and other non-recoverable charges?

- A. No, the company agrees that internal costs, including labor, engineering, legal or otherwise, are not recoverable. These costs are specifically excluded from recovery by the riders themselves. Rider GEA defines Incremental Costs as:

Incremental Costs refer to all payments by Utility to outside vendors in connection with Environmental Activities associated with the investigation and cleanup of former Manufactured Gas Plants. Such costs also include but are not limited to consultant and legal fees, land acquisition costs, litigation expenses, costs or expenses associated with judgments, order or decisions (including settlements) by a court, a governmental agency or department, or other adjudicatory or quasi-adjudicatory body related to Manufactured Gas Operations/Sites.

The Company recognizes that costs must be paid to outside vendors in order to be recoverable. The Company notes that legal costs for outside counsel for the MGP insurance recovery litigation are recoverable. Staff allowed the recovery of such costs during the Company's MGP insurance litigation. The litigation and associated legal fees were incurred on a "generic" basis, just as the Background PAH Study costs were. The Company was not required to file separate litigation for each of its MGP sites and account for legal fees on a site-by site basis (Docket Numbers 96-0011, 96-0207, 97-0220, 98-0294, 99-0338, 00-0439). The

137 Background PAH Study costs were paid to an outside vendor (EPRI), were
138 prudent, were MGP-related and met all of the requirements for recovery under the
139 riders.

140 9. Q. Does this conclude your rebuttal testimony?

141 A. Yes it does.